

Peter Strojnik, 6464
STROJNIK, P.C.
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Telephone: 602-524-6602
Facsimile: 602-296-0135
E-mail: *Strojnik@aol.com*
Special Counsel for Plaintiff Strata Title

IN THE UNITED STATES BANKRUPTCY COURT
ARIZONA DISTRICT

In Re:)	NO. 12-bk-24242-DPC
)	
Strata Title, LLC)	SPECIAL COUNSEL'S SECOND FEE
)	APPLICATION
Debtor,)	
)	
)	

Debtor's special counsel hereby files its Second Application for allowance of costs and fees. This Application is supported by the detailed Statement of Attorney's Fees appended hereto as Addendum A. Special counsel makes no claim for out of pocket costs since the filing of the First Fee Application.

Counsel respectfully represents:

FACTUAL BACKGROUND OF ACTION INVOLVING SPECIAL COUNSEL

1. On February 24, 2012, Plaintiff Strata Title, LLC ("Strata") and non-party Pure Country Estates, LLC ("Pure Country") entered into the operating agreement as equal members of Tempe Tower, LLC ("Tempe Tower"). Tempe Tower's purpose was to acquire and develop the property at 230 W Fifth Street in Tempe, Arizona

1 (“Property”). Strata and Pure Country elected John Lupypciw (“Lupypciw”) as the
2 manager.

3 2. The purchase price was funded through a \$1,365,000 loan from Defendant Milestone
4 Tempe, LLC (“Milestone”).

5 3. Milestone took a Deed of Trust against the Property. Exhibit 3. By the end of 2012,
6 Tempe Tower owed Milestone approximately 1.45 million on a balloon note.

7 4. Tempe Tower did not make the balloon payment at the end of 2012.

8 5. On November 6, 2012, Strata filed a petition under Chapter 11 of Title 11, U.S.C., *In*
9
10 *re Strata Title, LLC*, 2:12-bk-24242-DPC.

11 6. On December 28, 2012, Milestone recorded a Notice of Trustee’s Sale.

12 7. On January 11, 2013, Pure Country made written demand that Lupypciw, as manager
13 of Tempe Tower, “take all available actions to cure the Milestone Loan”.
14

15 8. Pure Country further complained that the status of the Milestone loan “dangerously
16 exposed the Company to liability and the possibility of losing the property”.
17

18 9. In compliance with his obligations as manager and based on the written demand by
19 Pure Country “to cure the Milestone Loan” and in order to avoid the foreclosure,
20 Lupypciw arranged to pay off the Milestone Note through a refinance.
21

22 10. On January 18, 2013, Tempe Tower opened escrow with Security Title and entered
23 into Terms and Conditions of Escrow – Refinance Transaction.
24
25

1 11.The Milestone Note and Deed of Trust were refinanced through a new laon from RLS
2 Capital, Inc. (“RLS”) on January 18, 2013.

3 12.On January 23, 2013, the refiance transaction closed.

4 13.RLS funded the refinance by depositing \$1.7M with Security Title. In turn, Security
5 Title distributed the refinance amount to, inter alia, Western in the amount of
6 \$1,461,191.94 to pay off the Milestone loan.
7

8 14.\$1,461,191.94 represents the full payoff of the Milestone Note and Deed of Trust.

9 15.At close of escrow on January 23, 2013, Security Title issued to Western Regional
10 Foreclosure a check in the amount of \$1,461,191.94 along with a Deed of Full
11 Release and Recoveyance releasing Milestone’s Deed of Trust.
12

13 16.Also at close of escrow, Security Title disbursed \$210,525.05 to Tempe Tower
14 pursuant to the terms of the escrow.
15

16 17.Also at close of escrow, Security Title recorded a Deed of Trust in favor of RLS with
17 the Maricopa County Recorder at 20130070874.

18 18.Post-closing, on information and belief, Pure Country complained to Security Title
19 that the refinance transaction was not authorized. Pure Country inexplicably argued
20 that despite its demand to Lupypciw to “take all available actions to cure the
21 Milestone Loan”, it had not given consent to cure the Milestone Loan by paying it
22 off.
23
24
25

1 19.As a result, and in agreement with Pure Country, Security Title took the lead on Pure
2 Country's claim and attempted to rescind the entire refinance transaction.

3 20.Western and Milestone agreed with Security Title to rescind the payoff of the
4 Milestone Note and Deed of Trust and voluntarily agreed to pay to Security Title
5 \$1,461,191.94.
6

7 21.The rescission of the Milestone payoff was not authorized, consented to or approved
8 by Tempe Tower of Strata Title.
9

10 22.RLS agreed to accept its loan proceeds back from Security Title and release its Deed
11 of Trust.

12 23.Tempe Tower declined to rescind the transaction and kept the proceeds of the
13 refinancing in the amount of \$210,525.05.
14

15 24.Security Title paid RLS back the entire \$1.7M refinance amount, some of it from its
16 own coffers.

17 25.No one obtained a consent from Tempe Tower to rescind the refinance transaction,
18 and Tempe Tower did not agree to rescind the refinance transaction.
19

20 26.No one obtained a consent from Strata to rescind the refinance transaction, and Strata
21 did not agree to rescind the refinance transaction.

22 27.Milestone Tempe refused to mark the Deed of Trust paid and failed to cancel the
23 Trustee's Sale, although it voluntarily rescheduled the trustee's sale to May 15, 2013.
24
25

1 28. On March 15, 2013, Strata, through counsel, filed an action in the Maricopa County
2 Superior Court seeking declaratory and injunctive relief.

3 **SERVICES PERFORMED**
4 **and**
5 **FEES INCURRED**

- 6 1. Special Counsel investigated the facts relating to the Milestone payoff and concluded,
7 after extensive legal and factual due diligence based on readily available information
8 and reasonable inquiry, that a filing of the Complaint for declaratory judgment and
9 injunctive relief was appropriate. In addition, special counsel concluded that an
10 Application for the issuance of a Temporary Restraining Order would benefit Strata
11 Title and, therefore, filed and serves such Application on the parties in interest. A
12 hearing on Strata Title's Application was conducted on May 7, 2013. In preparation
13 for the hearing, special counsel prepared and served subpoenas on Defendant Parties
14 and third parties with knowledge. All subpoenas have been served, or process has
15 been voluntarily accepted.
16
17 2. At the hearing on May 7, 2013, the Court indicated her initial inclination to enter the
18 TRO; however, following Milestone's offer to reschedule the Notice of Trustee's
19 Sale to a time after June 17, 2013, the Court rescheduled the TRO hearing for June 17,
20 2013, allowing the parties a full day of litigation.
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- 1 3. Special counsel also filed a Motion for the Judgment on the pleadings. This matter
2 was heard by the Honorable Katherine Cooper on Friday, August 2, 2013. Judge
3 Cooper took the matter under advisement.
- 4 4. A detailed account of counsel's activities and the itemized statement for services
5 rendered from April 30, 2013 to August 3, 2013 is appended hereto as Addendum A.
- 6 5. This Application seeks allowance of compensation for professional services rendered.
- 7 6. All services for which compensation is requested and all costs incurred were
8 performed or incurred primarily for the benefit of the Debtor, Strata Title.
- 9 7. Peter Strojnik is the primary attorney whose hourly services are billed. Mr. Strojnik
10 was admitted to the bar in 1980. The 9th Circuit has explained the intent of Congress
11 in enacting 11 U.S.C. 330 is "...to compensate attorneys and other professionals
12 serving in cases under title 11 at the same rate as the attorney or other professional
13 would be compensated for performing comparable services other than in a case under
14 title 11" *Manoa Finance Company, Inc. V. Klenske*, 853 F.2d 687,690 (9th Cir. 1988)
15 citing 124 Cong. Rec. 33,994 (1978). Undersigned's standard hourly rate is \$450.
- 16 8. 11 U.S.C. 330(a)(3)(E) mandates that the court should consider counsel's
17 demonstrated skill and expertise. Applicant has been actively practicing civil
18 litigation for 32 years. Applicant has practiced in the State of Arizona, the 9th Circuit
19 Court of Appeals, various divisions of the US District Court, the US District Court
20 for New Jersey and other courts under the auspices of *pro hac vice* applications.

1 9. Applicant holds no reserves for this litigation matter.

2 10. The total amount of attorney's fees earned between April 30, 2013 to August 3, 2013
3 to date is \$13,837.50.

4 11. Applicant has received no payment and no promises for payment from any source for
5 services rendered in any capacity whatsoever in connection with this case and there is
6 no agreement or understanding between Applicant and any other person for the
7 sharing of compensation to be received for services rendered in this case.
8

9 12. Applicant submits that the reasonable value of the services rendered by him, as
10 special counsel for the Debtor, for this application is \$13,837.50.
11

12 **WHEREFORE**, Applicant requests that a payment for fees of \$13,837.50.

13 RESPECTFULLY SUBMITTED this 3rd day of August, 2013.
14

15 **STROJNIK, P.C.**

16 /s/
17

18 By: Peter Strojnik
19 Special Counsel for Plaintiff Strata Title
20 LLC

21 The original e-filed with the Court.

22 **2:12-bk-24242-DPC Notice will be electronically mailed to:**

23 RICHARD J. CUELLAR on behalf of U.S. Trustee U.S. TRUSTEE
24 connie.s.hoover@usdoj.gov

25 RONALD J. ELLETT on behalf of Debtor Strata Title, LLC

1 rjellett@ellettlaw.phxcoxmail.com, hsantilli@ellettlaw.com

2 RONALD J. ELLETT on behalf of Debtor Studio City Lofts, LLC
3 rjellett@ellettlaw.phxcoxmail.com, hsantilli@ellettlaw.com

4 RONALD J. ELLETT on behalf of Defendant Strata Title, LLC
5 rjellett@ellettlaw.phxcoxmail.com, hsantilli@ellettlaw.com

6 RONALD J. ELLETT on behalf of Interested Party Strata Title LLC
7 rjellett@ellettlaw.phxcoxmail.com, hsantilli@ellettlaw.com

8 RONALD J. ELLETT on behalf of Plaintiff Strata Title, LLC
9 rjellett@ellettlaw.phxcoxmail.com, hsantilli@ellettlaw.com

10 CRAIG SOLOMON GANZ on behalf of Interested Party PURE COUNTRY TOWER
11 LLC
craig.ganz@gknet.com, rachel.milazzo@gknet.com

12 JENNIFER A. GIAIMO on behalf of U.S. Trustee U.S. TRUSTEE
13 Jennifer.A.Giaino@usdoj.gov

14 GREGORY P. GILLIS on behalf of Interested Party MILESTONE TEMPE, LLC
15 ggillis@ngdlaw.com,
szink@ngdlaw.com;sharl@ngdlaw.com;nharrison@ngdlaw.com;jcook@ngdlaw.com

16 JANEL M. GLYNN on behalf of Interested Party PURE COUNTRY TOWER LLC
17 janel.glynn@gknet.com, angie.renteria@gknet.com;rachel.milazzo@gknet.com

18 SCOTT GRIFFITHS on behalf of Defendant Studio City Lofts, LLC
19 docket@gzlawoffice.com, sgriffiths@gzlawoffice.com

20 CHRISTOPHER R. KAUP on behalf of Interested Party Parkway Bank & Trust Co.
21 crk@tblaw.com, ramchugh@tblaw.com

22 CHRISTOPHER R. KAUP on behalf of Interested Party Parkway Bank & Trust
23 Company
24 crk@tblaw.com, ramchugh@tblaw.com

25 KEITH M. KNOWLTON on behalf of Petitioning Creditor Continental Group LLC
keithknowlton@msn.com

1 DANIEL R LORD on behalf of 3rd Pty Defendant Beer & Toone, P.C.
2 dlord@beer-toone.com

3 DANIEL R LORD on behalf of 3rd Pty Defendant Daniel Robert Lord
4 dlord@beer-toone.com

5 DANIEL R LORD on behalf of Defendant Jane Doe Hatkoff
6 dlord@beer-toone.com

7 DANIEL R LORD on behalf of Defendant Reed Hatkoff
8 dlord@beer-toone.com

9 DANIEL R LORD on behalf of Plaintiff Aries Holdings, LLC
10 dlord@beer-toone.com

11 K. LAYNE MORRILL on behalf of Defendant Morrill & Aronson, P.L.C.
12 lmorrill@maazlaw.com

13 K. LAYNE MORRILL on behalf of Defendant SAM III L.L.C.
14 lmorrill@maazlaw.com

15 K. LAYNE MORRILL on behalf of Defendant SAM REI, L.L.C.
16 lmorrill@maazlaw.com

17 K. LAYNE MORRILL on behalf of Defendant Layne Morrill
18 lmorrill@maazlaw.com

19 K. LAYNE MORRILL on behalf of Interested Party SAM REI, LLC
20 lmorrill@maazlaw.com

21 ADAM 1 NACH on behalf of Interested Party Tempe Tower, LLC
22 adam.nach@azbar.org, adam.nach@azbar.org;tturner@lane-
nach.com;lbnkcourt@yahoo.com;sheila.rochin@lane-nach.com

23 ADAM B. NACH on behalf of Interested Party Tempe Tower, LLC
24 adam.nach@azbar.org;lbnkcourt@yahoo.com

25 ADAM B. NACH on behalf of Plaintiff Tempe Tower, LLC
adam.nach@azbar.org;lbnkcourt@yahoo.com

1 K. SCOTT REYNOLDS on behalf of Debtor Strata Title, LLC
2 reynolds@reynoldslawpc.com

3 WARREN J. STAPLETON on behalf of 3rd Pty Defendant The Elaine Kirsch Revocable
4 Trust
5 wstapleton@omlaw.com, pnieto@omlaw.com

6 WARREN J. STAPLETON on behalf of Creditor Elaine Kirsch Revocable Trust
7 wstapleton@omlaw.com, pnieto@omlaw.com

8 WARREN J. STAPLETON on behalf of Creditor The Elaine Kirsch Revocable Trust
9 wstapleton@omlaw.com, pnieto@omlaw.com

10 WARREN J. STAPLETON on behalf of Defendant The Elaine Kirsch Revocable Trust
11 wstapleton@omlaw.com, pnieto@omlaw.com

12 PETER STROJNIK on behalf of Debtor Strata Title, LLC
13 ps@strojnik.com, ts@strojnik.com

14 PETER STROJNIK on behalf of Defendant Continental Group, LLC
15 ps@strojnik.com, ts@strojnik.com

16 PETER STROJNIK on behalf of Defendant Strata Title, LLC
17 ps@strojnik.com, ts@strojnik.com

18 PETER STROJNIK on behalf of Defendant John Lupypciw
19 ps@strojnik.com, ts@strojnik.com

20 SCOTT H. ZWILLINGER on behalf of Debtor Studio City Lofts, LLC
21 docket@gzlawoffice.com, szwillinger@gzlawoffice.com

22 SCOTT H. ZWILLINGER on behalf of Defendant Studio City Lofts, LLC
23 docket@gzlawoffice.com, szwillinger@gzlawoffice.com

24 /s/
25

ADDENDUM A
REASONABLE ATTORNEY'S FEE

DATE	DESCRIPTION OF SERVICES	TIME
2013-05-11	Review 2013-05-07 ME	0.10
2013-05-11	Review 2013-05-09 ME	0.10
2013-05-13	Preparation, review and submission of Motion to Amend. (1.00)	1.00
2013-05-13	Preparation, review and submission of 1 st Amended Complaint (1.50)	1.50
2013-05-14	Conference with Nathaniel Rose: he wants to have a hearing before Judge Rea on Thursday and resolve the Security Title discovery issues. I am leaving town on Friday and Thursday is very busy for me, so I cannot get ready to do it on Thursday. We can do it when I get back. (0.25)	0.25
2013-05-14	Review Milestone's Response to Subpoena and a foot of documents produced. (1.25)	1.25
2013-05-16	Exchange e-mails with Walter Ulrich re service of process. (0.25)	0.25
2013-05-28	Review Security Title's Response to Motion for Contempt with exhibits; review legal analysis. (1.00)	1.00
2013-06-03	Review Hindbo's Response to Motion for Contempt. (0.50)	0.50
2013-06-03	Preparation, review and submission of Response in Objection to Second Motion to Extend Time to Respond to MJP. (1.25)	1.25
2013-06-10	Preparation, review and submission of e-mail to Greg Gillis re: continued representation of Strata. (0.25)	0.25
2013-06-10	Conference with John re: Milestone. Very disappointed in decision of judge (Doc 158). Ron told him that he would appeal. All matters are related. (0.25)	0.25
2013-06-10	Leave message for Ron to call back – is he going to appeal? Call cell – leave message. (0.00)	0.00
2013-06-11	Preparation, review and submission of Reply to Response to Motion for Contempt and Response To Cross Motion For Sanctions. (3.00)	3.00
2013-06-11	Review Notice of Filing Judge Collins' ruling. (0.10)	0.10
2013-06-11	Preparation, review and submission of e-mail to Ellett and Lupyciw re [REDACTED]. (0.10)	0.10
2013-06-14	Conference with John re FED and Milestone. Confirm dates and times. Explain the proceedings. (0.10)	0.10
2013-06-14	Preparation for and attendance at telephonic status conference. 1. Milestone is cancelling the Lupyciw Guarantee. This will be filed ASAP. I will file a Notice of Withdrawal. 2. Extended Brief in Response to Motion for Judgment on the Pleadings addressing BK appeal issue on June 25, 2013. 3. Reply on Brief on Motion for Judgment on the pleadings July 9. 4. Extended Oral Argument on August 2.	1.00

	5. Decision within 2 weeks. 6. Judge “strongly” suggests that Milestone voluntarily extend the trustee’s sale until after decision. Gillis will get back to her. Unless voluntary, she will order it.	
2013-06-14	Preparation, review and submission of e-mail to Ron and John re [REDACTED]. Reschedule meeting with John. (0.10)	0.10
2013-06-27	Review Notice of Appeal (Doc 169) with attachments. (0.10)	0.10
2013-06-27	Review Notice of Referral to 9 th Circuit BAP (Doc 170) (0.10)	0.10
2013-07-06	Review amended response to Motion for Judgment on the Pleadings and the Cross Motion for Summary Judgment and the cases and authorities cited therein, along with SOF in support. (2.35)	2.35
2013-07-07	Preparation, review and submission of Reply re Amended Response to Motion for Judgment on the Pleadings and Response to Motion for SJ (7.50)	7.50
2013-07-11	Review e-mail with 2013-07-10 letter attached. (0.10)	0.10
2013-07-11	Preparation, review and submission of e-mail letter to Gillis. (1.50)	1.50
2013-07-27	Meeting with Ellett, Lupypciw, Kitter at Ellett’s offices regarding [REDACTED]. (2.00)	2.00
2013-07-29	Review Milestone Tempe LLC’s Reply to Strata’s Response to the Cross-Motion for Summary Judgment. (0.50)	0.50
2013-07-29	Review Milestone Tempe LLC’s Supplemental Response to Strata’s Motion to Amend the Complaint. (0.25)	0.25
2013-08-02	Preparation for hearing on MJP. Review all filings and positions. Attendance at hearing. Presentation of oral argument. (4.25)	4.25
	ATTORNEY TIME TOTAL	30.75
	REASONABLE ATTORNEY’S FEE	\$13,837.50